APPEAL NO. 93434

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). On March 2, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. On March 19, 1993, the hearing officer, on her own motion, reopened the record and hearing "in that none of the impairment ratings presented by the parties constitute valid . . . impairment upon which the Hearing Officer may base her decision . . . ." The record was closed on May 1, 1993. The sole issue presented and acknowledged by the parties as correct was: "has the Claimant reached maximum medical improvement, and if so, what should be the proper date and percentage of impairment?" The hearing officer determined that claimant reached maximum medical improvement (MMI) on May 4, 1992, with a whole body impairment of 11% and that the designated doctor's report had not been overcome by the great weight of other medical evidence to the contrary.

Appellant, claimant herein, appealed indicating disagreement with the designated doctor's MMI date and impairment rating. Respondent, carrier herein, responds that the decision is supported by the evidence and requests that we affirm the decision.

DECISION

The decision of the hearing officer is affirmed.

Claimant testified that he had worked as a packer for Producers Cooperative Marketing, employer herein, for seven years prior to his injury. Claimant states he was injured when he set bags in a slot, pulled rope down and "proceeded doing this all day." Claimant saw the company doctor, (Dr. CO) immediately after the injury. (Dr. R) is the treating doctor. Claimant also saw (Dr. CT) at carrier's request. Although not clear from the record, claimant eventually saw (Dr. S) the designated doctor, who was apparently selected by the Texas Workers' Compensation Commission (Commission). Dr. R at some time apparently referred claimant to (Dr. CU).

Dr. R filed a Report of Medical Evaluation (TWCC-69) certifying MMI on 5/4/92 with a 50% impairment. Dr. R in a narrative report dated January 22, 1993 states: "a fifty percent level (of impairment) is more of an administrative figure. It is not a technical figure from either the AMA or AAOS guidelines." In a May 4, 1992 letter Dr. R requests a second opinion and suggests surgery may be a possibility.

Dr. CT in an August 3, 1992 report states his tests ". . . translates into 15% impairment of the whole person, according to Guides to the Evaluation of Permanent Impairment, Third Edition, American Medical Association." Dr. CT, however, fails to certify MMI.

Dr. S, the designated doctor, filed a TWCC-69 certifying MMI on 10-1-92 with a whole body impairment rating of 10%. In an accompanying report, Dr. S states: "The goniometer method was used in conjunction with the AMA Guides to Permanent Impairment, 3rd edition

(revised)." In an undated letter to carrier, Dr. S changed the MMI date from October 1, 1992 to May 4, 1992.

Dr. CU, on referral from Dr. R, in a June 4, 1992 report states ". . . I'm at a loss to completely explain [claimant's] pain in his shoulder . . . . the MRI is a very soft call . . . I would think there is a very slim chance or no chance he would improve his surgical decompression."

The hearing officer in an Order to Reopen the Contested Case Hearing Record on March 19, 1993, summarized the evidence presented and determined none of the doctors had made a proper certification of MMI and whole body impairment rating using the mandated version of the Guides to the Evaluation of Permanent Impairment (AMA Guides). Article 8308-4.24. The hearing officer wrote the designated doctor, requested an evaluation using the mandated AMA Guides. In that there was apparently a question whether the designated doctor had all the medical records available, the hearing officer directed that "all records of the Claimant (be made) available to (the designated doctor)." Both the hearing officer's Order, and the designated doctor's response were made available to the parties and time was allowed for comment.

By letter dated March 25, 1993, Dr. S, the designated doctor, assigned on 11% whole person impairment rating stating the mandated AMA Guides had been used.

The hearing officer's pertinent determinations were:

FINDINGS OF FACT

4.The Claimant suffered a compensable injury to his right shoulder on February 6, 1992, and the Carrier has paid benefits to the Claimant, including impairment income benefits based upon a whole body impairment of 10%.

5.The Claimant's treating doctor, [Dr. R], certified the Claimant reached maximum medical improvement on May 4, 1992, and had a percentage of whole body impairment of 50%; Dr. R did not use the Guides to the Evaluation of Permanent Impairment, Third Edition, Second Printing, to determine the Claimant's percentage of whole body impairment.

6.[Dr. CT], did not state a date on which maximum medical impairment was reached; he assessed the Claimant's percentage of whole body impairment to be 15%; [Dr. CT], did not have all of the Claimant's medical records in his possession when he evaluated the Claimant.

7.Dr. S was the doctor designated by the Commission to resolve the dispute concerning the Claimant's percentage of whole body impairment and the date on which the Claimant reached maximum medical improvement.

8.Dr. S agreed that the Claimant reached maximum medical improvement on May 4, 1992.

9.Dr. S determined that the Claimant had a percentage of whole body impairment of 11%, after he reevaluated the percentage of whole body impairment based upon statutorily mandated publication.

CONCLUSIONS OF LAW

4.The Claimant reached maximum medical improvement on May 4, 1992, pursuant to Art. 8308-1.03(32) V.T.C.S.

5.The great weight of the other medical evidence presented did not overcome the presumptive weight to be accorded the report of the designated doctor; the Claimant' percentage of whole body impairment is 11%, pursuant to ART. 8308-4.26(g) V.T.C.S.

6.The Claimant is owed impairment income benefits based upon the percentage of whole body impairment of 11%, pursuant to ART. 8308-4.26 V.T.C.S.

Claimant generally challenges the sufficiency of the evidence to support the hearing officer's determinations.

We have repeatedly emphasized the unique position of the designated doctor under the 1989 Act. *See* Texas Workers' Compensation Commission Appeal No. 92555, decided December 2, 1992; Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. Article's 8308-4.26(b) and 4.25(b) accord the report of the designated doctor "presumptive weight." In Appeal No. 92412, we went on to point out that to outweigh the report of the designated doctor requires more than a mere balancing of the medical evidence or a preponderance of medical evidence; rather, such other medical evidence must be determined to be the "great weight" of the medical evidence contrary to the report. We have also held that a claimant's lay testimony does not constitute medical evidence that can be considered in determining whether the "great weight" rebuts the "presumptive weight" of the designated doctor's report. *See* Texas Workers' Compensation Commission Appeal No. 93072, decided March 12, 1993. In the instant case, Dr. R, the treating doctor in giving a 50% impairment rating, clearly states that rating is "an administrative figure" and he had not used the prescribed version of the AMA Guides. Dr. CT, rendered a 15%

impairment rating but failed to certify an MMI date. No other doctors, other than the designated doctor, certified MMI and an impairment rating. We find sufficient evidence to support the hearing officer's decision of MMI on May 4, 1993, with an 11% impairment rating and that the great weight of the other medical evidence did not overcome the "presumptive weight" of the designated doctor.

The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Article 8308-6.34(e). Where, as here, there is sufficient evidence to support this determinations, there is no sound basis to disturb his decision. Only if we were to determine, which we do not in this case, that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust would we be warranted in setting aside his decision. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Texas Workers' Compensation Commission Appeal No. 92232, decide July 20, 1992.

The decision is affirmed.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Susan M. Kelley
Appeals Judge